SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1948~~ 1949

No. ~~---~~ 16

LEROY GRAHAM, ET AL.,

Petitioners,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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Petitioners, 21 negro firemen on the three major southeastern railroads, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

Opinions Below

The opinion of the district court granting petitioners a preliminary injunction is reported in 74 F. Supp. 663. The opinion of the court of appeals (R. 73) has not yet been reported.

Jurisdiction

The judgment of the court of appeals was entered on October 26, 1948 (R. 80). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended (now 28 U. S. C. § 1254).

Questions Presented

1. Whether the District Court for the District of Columbia has the dual jurisdiction of both a federal and a state court so that the "local" venue statute of the District of Columbia may be applied to a suit brought under the Railway Labor Act, which, in any of the States, could be brought in either the federal or the state court.

2. Whether local lodges of the respondent Brotherhood of Firemen and Enginemen and the secretaries of these local lodges "fairly insure the adequate representation" of the entire class of membership of the respondent Brotherhood under Rule 23(a) of the Federal Rules of Civil Procedure for purposes of supporting venue in a class action against the Brotherhood, as was held by the Court of Appeals for the Fourth Circuit in *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 148 F. (2d) 403.

3. Whether Section 301(c) of the Labor-Management Relations Act, 1947, providing that a "labor organization" may be sued "in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members", applies to all labor organizations or whether organizations of railway employees are excluded therefrom.

Statutes Involved

The pertinent provisions of the statutes involved in this case are set out in the Appendix.

Statement

1. *Institution of Suit:* On October 27, 1947, petitioners, 21 negro firemen on the three major southeastern railroads, brought this suit to vindicate their rights under the Railway Labor Act (48 Stat. 1185; 45 U. S. C. §§ 151 et seq.) and the Constitution of the United States. Petitioners instituted the action on their own behalf and on behalf of all other negro firemen similarly situated against the railroads, the respondent Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the Brotherhood), the two District of Columbia Lodges of the Brotherhood and the secretaries of these two lodges (R. 1-4).

Petitioners' cause of action is based upon the decisions of this Court in *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, and *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210. The complaint alleged that the Brotherhood, as sole bargaining agent of the entire class of locomotive firemen, including these plaintiffs and other negro firemen, had negotiated agreements and arrangements with the railroads which discriminate against colored firemen and deprive them of the rights and job assignments to which their seniority entitles them (R. 6-9). The complaint further alleged that, notwithstanding the determination by this Court that this discrimination was illegal and violative of the Railway Labor Act, respondent Brotherhood and the southeastern carriers continued to discriminate against petitioners and their class, resulting in the unlawful displacement and demotion of many negro firemen and their replacement by white firemen having less seniority (R. 9, 14).

The complaint further alleged that the Brotherhood maintains offices in the District of Columbia, acts as bargaining representative within the District and is otherwise doing business regularly within the District (R. 3); that two sub-

ordinate lodges of the Brotherhood maintain offices and secretaries within the District and are composed principally of members of the Brotherhood who reside in the District (R. 3-4); and that "defendants subordinate Lodges . . . are all the lodges of defendant Brotherhood within the District of Columbia and are truly and fairly representatives of the other subordinate lodges of Brotherhood and of Brotherhood itself, and the interest of all the members, subordinate lodges and of the Brotherhood will be adequately represented in this action by the defendants. The defendants subordinate Lodges and the defendants McQuade and Lacey [the secretaries] are sued as representatives of the membership of all the subordinate lodges and of the Brotherhood itself as a class under Rule 23(a) of the Federal Rules of Civil Procedure" (R. 4).

Petitioners' complaint sought a determination of their rights and those of their class, a permanent injunction against any further discriminatory practices, an order directing restoration of jobs unlawfully taken away, damages for loss of employment and wages by reason of the discriminatory practices, and a preliminary injunction pending final hearing and determination of the action (R. 15-16).

2. *Motion for Preliminary Injunction:* At the time of filing the complaint on October 27, 1947, petitioners moved the District Court for a preliminary injunction to prevent further discrimination and loss of job assignments pending the final determination of the action (R. 22-23). In support of this motion, petitioners filed a detailed affidavit by Benjamin F. McLaurin, Field Organizer of the Provisional Committee to Organize Colored Locomotive Firemen, who had been in close and active association with these colored firemen and was fully familiar with the facts and practices complained of (R. 23-24). McLaurin's affidavit stated that in 1944 the Supreme Court of the United States

in the *Steele* and *Tunstall* cases held the discriminatory practices of the Brotherhood and the railroads involved to be violative of the Railway Labor Act (R. 29); that nevertheless the Brotherhood ignored these decisions and continued to carry out the provisions of the unlawful and discriminatory agreements and arrangements (R. 30); that the displacement of steam power by Diesel locomotives is growing and negro firemen are being displaced at an ever increasing rate; and that unless these discriminatory practices are stopped, the complete elimination of negroes from their time-honored jobs as locomotive firemen in the near future is inevitable (R. 30).

3. *Action of Brotherhood:* The Brotherhood filed no affidavit or other evidence challenging any of the facts set forth in the bill of complaint or the McLaurin affidavit. Instead, it filed a Motion to Dismiss or to Stay further Proceedings on grounds, among others, of improper venue and failure of service (R. 39-40).

4. *The Position of the United States Government:* The United States moved the District Court for leave to file a memorandum as *amicus curiae*. Upon the granting of this motion, the Attorney General filed a memorandum in support of petitioners' preliminary injunction. The Government stated in part as follows (p. 3):

> ". . . we submit that there is a public as well as a private interest in this litigation which requires that the defendants' unlawful discriminatory conduct be restrained at the earliest moment. Almost three years have elapsed since the Supreme Court held that the Brotherhood defendant was acting in violation of the federal statute, and that the discrimination based upon race was 'invidious' as well as 'illegal.' The Brotherhood, and the railroads which have cooperated with it —whether willingly or not—have completely ignored and disregarded the Supreme Court's ruling. They

have continued to go their own way without paying any attention to the law of the land as it has been applied to the very contract here in issue by the highest tribunal."

5. *Hearings before the District Court:* On November 10th and 25th the district court took testimony and heard full and complete arguments on the Brotherhood's motion to dismiss and on petitioners' motion for preliminary injunction. The district court gave the Brotherhood every opportunity to challenge the facts in the complaint and the McLaurin affidavit, but the Brotherhood refused to avail itself of the opportunity.

6. *Judgment of the District Court:* The district court denied the Brotherhood's defense of improper venue (R. 50-51) on the authority of *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 148 F. (2d) 403. Thereafter the district court granted petitioners' motion for a preliminary injunction against the Brotherhood (R. 62-66) stating that there was "no doubtful question of law" since "we already have rulings by the Supreme Court of the United States and by the Circuit Court of Appeals for the Fourth Circuit condemning as illegal the specific practices set forth in the complaint" (R. 65). On December 3, 1947, the district court entered its findings of fact, conclusions of law and preliminary injunction restraining the Brotherhood and the railroads from discriminating against petitioners and other negro firemen by denying them their seniority rights on job assignments made after the date of the order (R. 70-72).

7. *Proceedings in the Court of Appeals:* The railroads did not appeal from the preliminary injunction but the Brotherhood petitioned the court below for the allowance of a special appeal under D. C. Code, Section 17-101, and a stay of the preliminary injunction. On December 9, 1947,

the court below ordered that the preliminary injunction granted by the district court be stayed pending final action on the petition for special appeal. On January 5, 1948, the court entered an order allowing the special appeal and continuing the stay of the preliminary injunction pending final disposition of the appeal. Argument was heard on April 13, 1948 and on October 26, 1948, the court entered its opinion and judgment holding that the venue in the instant case was "mischosen." The court rejected petitioners' contention that the District Court for the District of Columbia has the dual jurisdiction of both federal and state courts so that the "local" venue statute of the District of Columbia may be applied to a case under the Railway Labor Act which, in any of the States, could be brought in either the federal or the state court. The court reversed the district court's holding that venue was properly laid in the District of Columbia considering the case as a class suit, a holding fully supported by the decision of the United States Court of Appeals for the Fourth Circuit in *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 148 F. (2d) 403. Thirdly, the Court rejected, *sub silentio*, petitioners' contention that venue was properly laid in the District of Columbia under Section 301(c) of the Labor-Management Relations Act, 1947, which allows suit against a labor organization in any district in which agents of the union "are engaged in representing or acting for employee members." Rejecting all three of these contentions, any one of which would sustain venue in the District Court, the court below, after having stayed the preliminary injunction for over 10½ months, directed the district court to transfer the case to the Northern District of Ohio.[1]

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[1] The statute under which the court below purported to act provides for the transfer of a case of mischosen venue "to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). The court below made no finding that this case could have been brought in the North-

Specification of Errors to Be Urged

The court below erred:

1) In holding that the "local" venue statute of the District of Columbia is inapplicable to a suit under the Railway Labor Act.

2) In holding that local lodges of the Brotherhood and their secretaries will not "fairly insure the adequate representation" of the entire class of the membership of the Brotherhood under Rule 23(a) of the Federal Rules of Civil Procedure.

3) In holding, without discussion, that Section 301(c) of the Labor-Management Relations Act, 1947, does not support venue in the District Court for the District of Columbia.

4) In directing the district court to transfer the case to the Northern District of Ohio without anything in the record to indicate that the suit could have been brought in that district as required by 28 U.S.C. § 1406(a).

Reasons for Granting the Writ

The decision of the court below is clearly erroneous. More significant for purposes of this petition, however, are the important and extremely damaging results that will inevitably flow from this decision if it is allowed to stand. In the first place, the present forum was carefully chosen because the Brotherhood and the major southeastern railroads all do business in the District of Columbia; if this forum is unavailable, it is not known whether any other forum is available to vindicate the rights of the colored firemen

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ern District of Ohio. As far as appears from the record and as far as petitioners are informed, the railroads involved do no business in the Northern District of Ohio. The Brotherhood has continuously maintained that these railroads are indispensable parties to any suit.

declared by this Court four years ago and still brazenly ignored by the Brotherhood and the railroads. Certainly the forum directed by the court below, the Northern District of Ohio, is wholly inadequate since the railroads are not doing business there. In the second place, the decision of the court below discriminates against, and curtails the rights of, litigants in the District of Columbia courts; they are denied the "local" or "state" forum available to litigants in suits brought in every State of the Union in cases of concurrent federal and state jurisdiction. Finally, the decision of the court below means that in order to invoke the "local" venue statute in any case in the District of Columbia, a plaintiff will have to show that if he had brought suit in another jurisdiction, he could *not* have brought the suit in a federal court. In other words, federal jurisdiction will have to be negatived every time an effort is made to use the "local" venue statute in the District of Columbia. Neither the Congress nor this Court ever intended such an unworkable result.

1. THE DECISION OF THE COURT OF APPEALS HOLDING THE "LOCAL" VENUE STATUTE OF THE DISTRICT OF COLUMBIA INAPPLICABLE TO THIS CASE IS PLAINLY ERRONEOUS AND CONFLICTS WITH NUMEROUS DECISIONS OF THIS COURT.

Petitioners contended before the district court and before the court of appeals that venue is properly laid against the Brotherhood as an entity in the District of Columbia under the "local" venue statute of the District of Columbia (Section 11-306,[2] D. C. Code) providing for suit against a de-

[2] Section 11-306 provides that the District Court "shall have cognizance . . . of all cases in law and equity between parties, both or either of which shall be resident or be found within said district. . . ." The opinion of the court below strangely enough discusses only Section 11-308, D. C. Code, although Section 306 is plainly applicable. Section 308 of the same title reinforces the express provisions of Section 306 conferring jurisdiction under the facts as alleged in the complaint.

fendant "found" in the District. There cannot be any serious question that the Brotherhood is "doing business" in the District of Columbia[3] and is thus "found" within the District under the "local" venue statute. See *International Shoe Co.* v. *Washington*, 326 U. S. 310; *Frene* v. *Louisville Cement Co.*, 134 F. (2d) 511, 77 App. D. C. 129. The sole question, therefore, is whether this "local" venue statute applies to petitioners' suit.

Petitioners' cause of action in this case, although arising under the Railway Labor Act, is entertainable not only by federal district courts but by state courts as well. This concurrent jurisdiction of both state and federal courts of petitioners' cause of action is clearly indicated by *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, which arose through the state courts, and *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210, which arose through the federal courts. Since petitioners' action could have been brought in a state court in another jurisdiction, it seems clear that the "local" venue statute applies when the action is brought in the courts of the District of Columbia.

Exactly why the court below injected the issue of Article III versus Article I power into this case is not clear. Congress, acting under the Commerce Clause (see *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 553), passed the Railway Labor Act and gave petitioners rights enforce-

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[3] The court below did not pass upon the question whether the Brotherhood was "doing business" within the District of Columbia, but it is not believed that this can be seriously challenged by the Brotherhood. Two of its subordinate lodges (these were joined as defendants) are located in the District of Columbia and each of the lodges has a substantial number of dues-paying members (R. 4, 52-59). The Brotherhood moreover maintains a national office in the District in which one of its vice-presidents and a clerical assistant are permanently stationed and through which its national legislative activities are carried out (R. 40). In fact, the very Southeastern Carriers Agreement under attack in this case was executed in the District of Columbia (R. 17-19).

able in either federal or state courts. Petitioners have chosen the District of Columbia courts as the forum in which to vindicate these rights because both the railroads and the respondent Brotherhood are doing business in the District. The District of Columbia venue statute is applicable by its own terms to this action and the statute is a valid exercise of Congressional power whether enacted under Article I, Section 8, Clause 17, or under Article III. The court below has artificially injected a question of Article III versus Article I power into a case where it has no relevance. Because of the importance of the question involved and because the court below has injected this Article III versus Article I issue into the case, we have deemed it necessary to deal with the arguments made by the court below on this issue.

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The dual jurisdiction of the courts of the District of Columbia as both federal and state courts has been settled by authoritative decisions of this Court. Thus, in *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428, 442, 443, a unanimous Supreme Court, speaking through Mr. Chief Justice Taft, stated:

> "This (cl. 17, §8, Art. I) means that as to the District Congress possesses not only the power which belongs to it in respect of territory within a State but the power of the State as well. In other words, it possesses a dual authority over the District and may clothe the courts of the District not only with the jurisdiction and powers of federal courts in the several States but with such authority as a state may confer on her courts. *Kendall* v. *United States*, 12 Pet. 524, 619. * * * Subject to the guaranties of personal liberty in the amendments and in the original Constitution, Congress has as much power to vest courts of the District with a variety of jurisdiction and powers as a state legislature has in conferring, jurisdiction on its courts."

See, to the same effect, *Postum Cereal Co.* v. *California Fig Nut Co.*, 272 U. S. 693, 700.

In *O'Donoghue* v. *United States*, 289 U. S. 516, this Court, after quoting with approval the above language from the *Keller* case as to the dual jurisdiction of the courts of the District of Columbia, went on to state that the jurisdiction conferred upon the courts of the District of Columbia under Article III of the Constitution and the jurisdiction conferred under Article I, Section 8, Clause 17, "are not incompatible." 289 U. S. at 546. What the Court held in the *O'Donoghue* case was that salaries of the judges in the higher courts of the District of Columbia could not be reduced because these courts had been established under Article III, but the Court made it equally plain in its decision that these District of Columbia courts exercised the dual jurisdiction of federal and state courts.

This principle has been stated with extreme clarity by the court below in the earlier and apparently overlooked case of *King* v. *Wall and Beaver Street Corp.*, 79 U. S. App. D. C. 234, 145 F. (2d) 377, 380 (1944). There the court, speaking through Chief Justice Groner, had pointed out:

> "The District Court of the United States for the District of Columbia, as we have often said, is clothed with a two-fold jurisdiction. It has all the ordinary and usual jurisdiction of a State court in respect to matters which in a State would be exercised by a State court, and this it attains by Acts of Congress under the provisions of Section 8 of Article I of the Constitution. It likewise has all of the jurisdiction and powers of United States district courts elsewhere, and this jurisdiction is, in turn, conferred by Acts of Congress under Article III of the Constitution, *O'Donoghue* v. *United States*, 289 U. S. 516."

In the *King* case, plaintiffs sought to maintain an action which failed to meet the requirements of the federal venue

statute, and was equally improper under the "local" venue statute. Plaintiffs tried to lay venue in the District of Columbia by using part of each statute. The court of appeals correctly held that venue could not be established by intermingling parts of the two venue provisions, but it made clear that there would be jurisdiction if plaintiffs could meet the requirements of either the federal or the "local" venue statute.

We respectfully submit that, in the light of this dual or two-fold jurisdiction of the courts of the District of Columbia, the reasoning in the opinion of the court below is wholly incorrect and has led the court to its patently erroneous conclusion.

(1) The court below seems to have based its decision on the assumption that if the "local" venue statute were applied to this case, it would *affect* or *nullify* the federal venue statute. This overlooks the dual or two-fold jurisdiction of the courts of the District of Columbia so clearly defined in the cases referred to above. The application of the "local" venue statute to this cause of action, which could have been brought in either a federal or state court, no more *affects* or *nullifies* the federal venue statute than did the application of the Alabama venue statute when the *Steele* case was brought in the state court. Certainly one cannot say that the federal venue statute is *affected* or *nullified* when a state venue statute is applied and a suit is entertained in the state court simply because the suit might also have been brought in a federal court in a situation in which it has concurrent jurisdiction. No more can it be said that the federal venue statute is *affected* or *nullified* when the "local" venue statute of the District of Columbia is applied to a suit in the District of Columbia courts simply because the federal venue statute might have been

applied as a result of the concurrent jurisdiction of federal courts of the cause of action.

This erroneous assumption in the opinion below is illustrated by the court's reliance on *Doyle* v. *Loring*, 107 F. (2d) 337 (C. C. A. 6th 1939). That was a suit in the Federal district court in Tennessee by non-resident heirs against a non-resident administratrix for a discovery of the deceased's assets. The suit was brought in the federal court on the basis of diversity of jurisdiction. Venue did not properly lie in the Federal district court in Tennessee because neither the plaintiff nor the defendant were residents of the district. The plaintiff in the federal court tried to rely upon the state venue statute, and of course, the court held that the state venue statute could not be applied in the federal court. This Tennessee case is the exact opposite of the case at bar. Applying the decision below in the instant case to the situation in the Tennessee case, it would come down to this: if the plaintiff there had brought his suit for discovery in the Tennessee state court, the state judge should have refused to entertain the action because there was concurrent jurisdiction in the federal courts and the state judge would be *affecting* or *nullifying* the federal venue statute by applying the local state venue statute to the case before him. Merely to state this proposition illustrates the complete fallacy in the court's reasoning in the instant case.

What may have confused the court below is the difference between "exclusive" and "concurrent" jurisdiction of federal courts. If the case at bar were one of "exclusive" federal jurisdiction—admiralty, maritime, patent, copyright, etc. (28 U. S. C. §§ 1333, 1338)—the case could only be brought in a federal court and therefore, it might be argued that the federal venue statute alone would apply in a suit in the District of Columbia. But where as here the case is one of "concurrent" jurisdiction which can be brought

in either federal or state courts,[4] when it is brought in a state court, the local state venue statute applies and when it is brought in the courts of the District of Columbia the "local" or "state" venue statute is equally applicable.

(2) The second erroneous assumption in the opinion below lies in the suggestion that the present case "*requires the exercise of Article III power.*" The present case no more requires the exercise of Article III power because brought in the courts of the District of Columbia than it would if brought in a state court. The present case does require the exercise of *judicial* power and since it requires the exercise of judicial power, it may be reviewed by the Supreme Court, which, of course, it could not be if it required only the exercise of executive, legislative or administrative power. *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428. But the exercise of *judicial* power is quite different from the exercise of *Article III power.*

This difference between Article III power and judicial power is made clear in *Williams* v. *United States*, 289 U. S. 553, 565-566, holding that the Court of Claims is not an Article III court for purposes of protecting the judges' salaries against Congressional action. Nevertheless, this Court there stated that the Court of Claims and other legislative courts "possess and exercise judicial power—as distinguished from legislative, executive, or administrative power—although not conferred in virtue of the third article of the Constitution." This Court made this same distinction between judicial power and legislative, executive or administrative power in defining the nature of the courts of the District of Columbia in the *O'Donoghue* case when it stated that Congress "has conferred upon these

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[4] It is elementary that state courts have concurrent jurisdiction with federal courts over many kinds of actions which arise under federal statutes. See *Second Employers' Liability Cases*, 223 U. S. 1.

[D.C.] courts jurisdiction over non-federal causes of action, or over quasi-judicial or administrative matters . . ." (289 U. S. at 545).

The "local" venue statute is based on Article I, Section 8, Clause 17 of the Constitution[5] and makes it possible for the district court and the court of appeals to entertain judicial actions that would ordinarily be heard in state courts elsewhere than in the District of Columbia. The present case was brought in the District Court for the District of Columbia and was thus properly governed by the venue statute of the District of Columbia.

(3) The court below stated in its opinion that "it is not to be thought that Congress intended that a defendant sued in a case requiring the exercise of such power [Article III] should have less protection in respect of venue when the suit is commenced in the District Court of the United States for the District of Columbia than he would have if the suit had been commenced in any other United States district court also exercising Article III power." The concept of "protection" of the defendant is a wholly gratuitous one as applied to this case, since this a suit which could have been brought in a state court. If plaintiffs had sued the Brotherhood in a state court, the local state venue statute would have applied. How can it be said that there is less protection of defendant when plaintiffs sue in the courts of the District of Columbia and rely upon the "local" venue statute?

What the decision below really does is to curtail the "protection" given to litigants in the District of Columbia courts by denying them the "state" forum which they

[5] This is not to suggest that the "local" venue statute could not have been enacted as a proper exercise of Article III power. We are simply assuming, since the section is part of the District of Columbia Code, that it was enacted under Article I, Section 8, Clause 17.

would have in any of the States in cases of concurrent jurisdiction. The serious consequences of such a restriction, if permitted to stand, can be illustrated by the circumstances of the litigation at bar. The court below directed the district court to transfer the case to the Northern District of Ohio pursuant to 28 U. S. C. § 1406(a). Assuming 28 U. S. C. § 1406(a) has any application to a suit pending at the time of enactment, the section expressly limits transfer of a suit to a district "in which it could have been brought." The court below made no finding that this action could have been brought in the Northern District of Ohio nor could it have done so in this case. If the Brotherhood can only be sued in Ohio where it is an inhabitant, it may not be suable at all to enjoin the violation of the Railway Labor Act. The Brotherhood has asserted that the railroads are indispensable parties defendant which may well be so as the district court assumed. The complaint alleges that the defendant railroads operate along the eastern seaboard (R. 2) and they are in all probability not doing business in Ohio so that neither the Federal nor State courts of Ohio would have jurisdiction over this cause of action.

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The Court's attention is invited to the pending case of *National Mutual Insurance Company* v. *Tidewater Transfer Company*, No. 29, October Term, 1948. In its brief *amicus curiae*, the United States contends that Article I, Section 8, Clause 17 of the Constitution authorizes Congress to allow suits by District of Columbia citizens against citizens of any state in the federal district courts. This contention goes far beyond petitioners' contention here. In the *National Mutual* case the United States is arguing that Article I, Section 8, Clause 17 authorizes Congress to add non-Article III judicial power to federal courts outside the

District of Columbia. Here petitioners simply contend that Article I, Section 8, Clause 17 authorizes Congress to add non-Article III judicial power to the courts of the District of Columbia. The proposition is self-evident, is supported by numerous decisions of this Court, and is belabored here only because of the gross error of the court below.

2. THE DECISION OF THE COURT OF APPEALS THAT VENUE IS NOT PROPERLY LAID IN THE DISTRICT COURT CONSIDERING THE CASE AS A CLASS SUIT IS ERRONEOUS AND CONFLICTS WITH THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEALS IN *TUNSTALL* v. *BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN*, 148 F. (2d) 403.

There were other adequate bases to support the venue of the district court. Petitioners contended before the district court and before the court of appeals that venue was properly laid in the District of Columbia because the suit was brought as a class suit as well as a suit against the Brotherhood in its common name. The two District of Columbia lodges of the Brotherhood and the two secretaries of those lodges were joined as defendants along with the Brotherhood. Since these two local lodges and their two secretaries are inhabitants of the District, the inhabitancy requirement of the Federal venue statute, 28 U. S. C. § 112 (now 28 U. S. C. § 1391) is fully satisfied.

Paragraph 12 of the bill of complaint (R. 4) is clear and explicit:

> "12. Upon information and belief, defendants subordinate Lodges No. 7 and No. 532 are all the lodges of defendant Brotherhood within the District of Columbia and are truly and fairly representatives of the other subordinate lodges of Brotherhood and of Brotherhood itself, and the interest of all the members, subordinate lodges and of the Brotherhood will be adequately represented in this action by the defendants. The defendants subordinate Lodges and the defendants McQuade and Lacey [the secretaries] are sued as repre-

sentatives of the membership of all the subordinate lodges and of the Brotherhood itself as a class under Rule 23(a) of the Federal Rules of Civil Procedure."

The above allegation brings this case squarely within the *Tunstall* case, *supra*, upon which the district court relied in upholding venue. The allegations in the *Tunstall* case, as set forth in Judge Parker's opinion, are identical with the allegations in the case at bar.

Despite this, the court below held that the two local lodges and their secretaries did not "insure the adequate representation of all" the class under Rule 23(a) of the Federal Rules of Civil Procedure, since these lodges and officers did not engage in the discriminatory agreements and arrangements charged against the Brotherhood. The court's distinction of the *Tunstall* case boils down to this: The District of Columbia lodges have no discriminatory agreements with the railroads; the lodges in the *Tunstall* case had such agreements; therefore, the lodges in the *Tunstall* case were representative of the entire class, whereas, the District lodges are not. But the question whether the members of the class sued will fairly represent the interest of the absent members in the litigation does not turn on whether those joined have participated as fully as the others in the acts complained of. The question whether the defendants are truly representative for purposes of representing a class in a suit is not determined by technical niceties. The true test is whether the interests of the named defendants are sufficiently similar to those of the other members of the class that the defense will receive proper attention. This is what *Hansberry* v. *Lee* 311 U. S. 32 teaches.

The local lodges and secretaries have an identical interest with the Brotherhood in the preservation of the Brotherhood's treasury to which they contribute and upon which

they rely in time of need. They have a common interest in the successful functioning of the organization and its policies. They have common lawyers whom the institution of this action "brought in fighting". *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen, supra.* The lodges and officers joined as defendants have no interests which are "antagonistic to those whom. . . [they] would represent." Moore's Federal Practice, p. 2232. Just as in the *Tunstall* case, the local lodges and secretaries will fairly represent the entire class. See *Hansberry* v. *Lee*, 311 U. S. 32, 41-43.

The decision below, if permitted to stand, would seriously curtail the utility of the device of a class action which Rule 23(a) was designed to afford.[6]

3. THE DECISION OF THE COURT OF APPEALS OVERRULING SUB SILENTIO PETITIONERS' CONTENTION THAT SECTION 301(c) OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, APPLIES TO THE INSTANT CASE IS ERRONEOUS AND DECIDES AN IMPORTANT AND NOVEL QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Section 301(c) of the Labor-Management Relations Act, 1947, provides as follows:

> "For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

It would hardly seem controvertible that the lodges and their officers "are engaged in representing or acting for

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[6] Moore's Federal Practice refers to an action "by or against representatives of an unincorporated association" as "a good illustration" of the "true class suit" (p. 2236).

employee members" of the Brotherhood in the District of Columbia. In addition, the Brotherhood maintains an office at 10 Independence Avenue, S. W., Washington, D. C., which is operated by Mr. Jonas A. McBride, a Vice President and National Legislative Representative of the Brotherhood (R. 40).

Despite the clear language of this provision, the Brotherhood contended in the court below that Section 301(c) is inapplicable to any labor organization subject to the Railway Labor Act. In support of this contention, the Brotherhood pointed to Section 501(3)—a section of a later Title of the Labor-Management Relations Act—providing that the term labor organization "shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."[7] This same contention was made by this same Brotherhood in *United States* v. *Brotherhood of Locomotive Engineers et al.*, 79 F. Supp. 485, cert. den. Nov. 15, 1948, No. 277, October Term, 1948. That was a suit brought by the United States in the District Court for the District of Columbia against several railroad unions, including the Brotherhood of Locomotive Firemen and Enginemen, to restrain a strike called by the unions. The District Court accepted the Government's

[7] Section 2(5) of the Labor-Management Act defines the term "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Since Section 2(2) defines the term "employer" as excluding "any person subject to the Railway Labor Act," it is argued that the term "labor organization" excludes organizations of employees dealing with employers subject to the Railway Labor Act. It is equally arguable, since the definition of "labor organization" makes no express exclusion of labor organizations subject to the Railway Labor Act, that Congress did not intend any such blanket exclusion simply by using the word "employer" in the definition of "labor organization." And the surrounding circumstances make perfectly clear that the latter was what Congress intended.

argument that railroad labor organizations were not excepted from Section 301(c) and held that venue was properly laid in the District Court for the District of Columbia.

There is good reason for believing that the Congress did not intend by the general language of Section 501(3) in Title V to exclude railroad labor organizations from the venue and service provisions of Section 301 of Title III. By Section 212 of the Act, Congress specifically exempted "any matter which is subject to the provisions of the Railway Labor Act" from Title II which relates to conciliation and national emergencies. On the Brotherhood's interpretation of Section 501(3) this exemption in Section 212 was wholly unnecessary.

Congress did not make a specific exception for railway labor in Title III because it was concerned with the lack of uniformity in the various states of provisions for suits against labor organizations and it sought to provide a uniform law with respect to such suits. See *Senate Report No. 105, Calendar No. 104, 80th Cong., First Sess., pp. 15-18.* Since the Railway Labor Act contained no special provision for such suits in the case of labor organizations representing railway employees, there was no basis nor necessity for an exception and the Congress made none.[8] Parenthetically it might be noted that Title III of the Labor-Management Relations Act, which contains Section 301(c) also contains Section 304, forbidding political expenditures

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[8] The same Congress that passed the Labor-Management Relations Act also passed the new Judicial Code, providing in Section 1391 the following:

> "(C) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

A Congress that was thus concerned with uniformity with respect to corporate venue could hardly be assumed to have been less concerned with uniformity with respect to venue of labor organizations.

by labor organizations. Section 304 defines a "labor organization" in the exact language that the term is defined in the rest of the Act. It is common knowledge that the railroad labor organizations have created new organizations to handle political matters, just as have other labor organizations, apparently assuming that "labor organization" in Section 304 does not exclude organizations of railway employees. It hardly seems plausible that the term "labor organization" means one thing in Section 304 and another in Section 301.

Conclusion

The court below has erroneously decided three questions of substantial importance. Its decision refusing to apply the "local" venue statute is in conflict with the decisions of this Court. Its decision rejecting the local lodges and secretaries as representative of the class of membership of the Brotherhood is in conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in the *Tunstall* case. Its failure to apply Section 301(c) of the Labor-Management Relations Act is in conflict with a decision of the District Court in the same Circuit in another case, is contrary to the position taken by the United States and raises an important and novel question of federal law which has not been, but should be, settled by the Supreme Court. The transfer to the Northern District of Ohio, after staying the preliminary injunction for 10½ months, is a gross misapplication of judicial power. It is, therefore, respectfully submitted that this petition should be granted.

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APPENDIX

28 U. S. C. § 112. Federal Venue Statute.

"(a) Except as provided in sections 113 to 117 of this title, no person shall be arrested in one district for trial in another, in any civil action before a district court; and, except as provided in sections 113 to 118 of this title, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suits shall be brought only in the district of the residence of either the plaintiff or the defendant."

28 U. S. C. § 1406. Cure or waiver of defects.

"(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall transfer such case to any district or division in which it could have been brought."

§ 11-306—D. C. Code. General jurisdiction.

"Said court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States."

§ 11-308.—D. C. Code. Actions—Limitation upon—Inhabitants or sojourners in District of Columbia.

"No action or suit shall be brought in the District Court of the United States for the District of Columbia by original process against any person who shall not

be an inhabitant of, or found within, the District, except as otherwise specially provided."

Constitution: Article I, Section 8, Clause 17.

"The Congress shall have Power . . .

Cl. 17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—"

Constitution: Article III, Section 1.

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

Constitution: Article III, Section 2.

"Cl. 1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State,

or the Citizens thereof, and foreign States, Citizens or Subjects."

Federal Rules of Civil Procedure.

"Rule 23, Class Actions.

"(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought."

Labor-Management Relations Act, 1947 (Public Law No. 101, Chapter 120, 80th Cong., 1st Sess.)

"Sec. 301. (c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."